UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRI STAR CONSULTING GROUP, INC. and SWEET FROG HAUPPAUGE INC.,

Plaintiffs,

- against -

SWEETFROG ENTERPRISES, LLC F/K/A IMAGINATION ENTERPRISES, INC., SFF, LLC, and KI YOUNG CHA A/K/A DEREK CHA,

Defendants.

Case No.: 2:14-cv-02288

COMPLAINT

Plaintiffs, by and through their undersigned counsel, allege as follows:

THE PARTIES

1. Plaintiff Tri Star Consulting Group, Inc. is a corporation organized pursuant to the laws of the state of New York, with its principal place of business at 5 Wilderness Court, Manorville, New York 11949. Tri Star Consulting Group, Inc. is a citizen of New York.

2. Plaintiff Sweet Frog Hauppauge Inc. is a corporation organized pursuant to the laws of the state of New York, with its principal place of business at 5 Wilderness Court, Manorville, New York 11949. Sweet Frog Hauppauge, Inc. is a citizen of New York.

3. Upon information and belief, defendant SweetFrog Enterprises, LLC f/k/a Imagination Enterprises, Inc. is a limited liability company organized pursuant to the laws of the state of Virginia, with its principal place of business at 10800 Midlothian Turnpike, Suite 300, Richmond, Virginia 23235. Upon information and belief, all of the members of SweetFrog Enterprises, LLC are citizens of Virginia.

4. Upon information and belief, defendant SFF, LLC is a limited liability company organized pursuant to the laws of the state of Virginia, with its principal place of business at 10800 Midlothian Turnpike, Suite 300, Richmond, Virginia 23235. Upon information and belief, all of the members of SFF, LLC are citizens of Virginia.

5. Upon information and belief, defendant Ki Young Cha a/k/a Derek Cha is an individual and at all times relevant to this action maintains his principal place of business at 10800 Midlothian Turnpike, Suite 300, Richmond, Virginia 23235. Upon information and belief, Cha is a citizen of Virginia.

JURISDICTION AND VENUE

6. This court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) based on the diversity of the parties. The amount in controversy exceeds $75,000, exclusive of interest and costs.

7. Personal jurisdiction over the defendants is premised upon New York's long-arm statute with respect to acts of non-domiciliaries, as codified in New York Civil Procedure Law and Rules §§ 301 and 302.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

9. Plaintiffs' claim for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

NATURE OF ACTION

10. Plaintiff Tri Star Consulting Group, Inc. seeks damages, declaratory relief, injunctive relief and attorneys' fees, relating to, *inter alia*, the breach of a certain master franchise agreement it entered into with defendant SweetFrog Enterprises, LLC, which granted it the exclusive right to open and operate SweetFrog trademarked stores (or to subfranchise that

right to third-parties) to sell SweetFrog products utilizing the SweetFrog trademarks in a designated territory in the state of New York. Plaintiff Sweet Frog Hauppauge Inc. seeks damages, declaratory relief, attorneys' fees and rescission of a certain franchise agreement arising out of defendant SweetFrog Enterprises, LLC's sale of a franchise in violation of New York General Business Law § 680, *et seq.*, commonly referred to as the Franchise Sales Act ("FSA"), particularly § 683 and § 687, as well as common law fraud and negligent misrepresentation pursuant to the laws of the state of New York and/or Virginia. Defendant Cha directed and took part in some or all of the transactions which are the subject of this action and, pursuant to New York General Business Law § 691, is jointly and severally liable with and to the same extent as SweetFrog Enterprises, LLC for its violations of New York General Business Law § 683 and § 687.

FACTS COMMON TO ALL COUNTS

A. Defendants and Their Business

11. Upon information and belief, SweetFrog Enterprises, LLC was previously known as Imagination Enterprises, Inc.; Imagination Enterprises, Inc. changed its name to SweetFrog Enterprises, LLC in early 2012.

12. SweetFrog Enterprises, LLC is the parent company and predecessor to SFF, LLC.

13. SweetFrog Enterprises, LLC owns the SweetFrog trademarks and other intellectual property.

14. Upon information and belief, between April 2010 and May 2012, SweetFrog Enterprises, LLC was engaged in the business of operating SweetFrog trademarked stores. It was also engaged in the business of franchising the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks.

15. Upon information and belief, neither SweetFrog Enterprises, LLC nor Imagination Enterprises, Inc. has ever registered with the New York State Department of Law, Office of the Attorney General to offer or sell franchises in New York.

16. Upon information and belief, on or about July 3, 2012, SFF, LLC was registered with the New York State Department of Law, Office of the Attorney General to offer or sell franchises in New York. Upon information and belief, since at least that date, SFF, LLC has been engaged in the business of franchising the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks.

17. The SweetFrog trademarked stores feature, *inter alia,* soft-serve yogurt and other products and services and a self-service format where customers create individualized yogurt-based desserts. These stores do business under the trademark SweetFrog.

18. Upon information and belief, SweetFrog Enterprises, LLC and SFF, LLC have many of the same officers, directors, and administrative personnel.

19. Upon information and belief, Cha is the Vice President and a director of SweetFrog Enterprises, LLC and the Chief Executive Officer of SFF, LLC and directed and took part in some or all of the transactions which are the subject of this action.

B. The Financial Representations

20. Upon information and belief, Cha had a substantial amount of knowledge about the SweetFrog trademarked stores and a purported expertise in the industry. Cha had years of experience opening and operating SweetFrog trademarked stores, and access to a well of financial data from SweetFrog Enterprises, LLC's franchisees and corporate stores. By contrast, the plaintiffs had none of this industry experience or access. Cha cultivated an image of expertise, selling himself as an owner and operator of the SweetFrog trademarked stores to

plaintiffs, and provided plaintiffs with written and oral representations about the SweetFrog trademarked stores, as detailed below.

21. In or about the spring/summer of 2011, Patrick Biase (who is a principal of the plaintiffs herein), James Maloney (who is a principal of the plaintiffs herein) and Don Grivetti (who is a principal of the plaintiffs herein) were prospective investors in a SweetFrog franchise in Virginia, and ultimately acquired several SweetFrog franchises in Virginia, which are not the subject of this action.

22. In or about the spring/summer of 2011, Cha, on behalf of SweetFrog Enterprises, LLC (then known as Imagination Enterprises, Inc.), provided Maloney with detailed written financial information concerning the SweetFrog trademarked stores. Upon information and belief, SweetFrog Enterprises, LLC was fully aware and endorsed the fact that Maloney would share this information with investors, including Biase. The written information contained the following:

- The SweetFrog sales to food cost ratio was 24%;
- The initial investment costs of opening up a SweetFrog trademarked store were $195,800;
- A SweetFrog trademarked store operated by SweetFrog Enterprises, LLC in Lynchburg, Virginia projected annual sales in 2010-2011 of $940,000; operating profits of $403,791; and food costs equal to 24% of projected sales. The actual sales and operating profits of this store surpassed its projections; and
- The SweetFrog trademarked stores in Carytown and in Short Pump (both located in the Richmond, Virginia area) had actual monthly sales that

surpassed the monthly projections of the SweetFrog trademarked store in Lynchburg, Virginia.

23. In or about the spring/summer of 2011, Cha, on behalf of SweetFrog Enterprises, LLC, made oral representations to Grivetti concerning financial information of the SweetFrog trademarked stores. Upon information and belief, SweetFrog Enterprises, LLC was fully aware and endorsed the fact that Grivetti would share this information with investors, including Biase. Among other things, Cha told Grivetti that the SweetFrog trademarked store operated by SweetFrog Enterprises, LLC in Lynchburg, Virginia had sales of $123,000 in February 2011; $142,000 in March 2011, $146,000 in April 2011; and $125,000 for a portion of May 2011.

24. In or about the spring/summer of 2011, Cha, on behalf of SweetFrog Enterprises, LLC, made oral representations to Biase concerning financial information of the SweetFrog trademarked stores. Upon information and belief, SweetFrog Enterprises, LLC was fully aware and endorsed the fact that Biase would share this information with investors. Among other things, Cha told Biase that the SweetFrog trademarked store in Carytown (in the Richmond, Virginia area) had sales of over a $1,000,000 per year, and that the SweetFrog trademarked store in Chester, Virginia had sales of over $170,000 per month.

25. Biase discussed with Cha the possibility of opening up SweetFrog trademarked stores in the New York metro area. Cha was excited about the possibility of expanding and opening SweetFrog trademarked stores in New York – indicating that Cha (and SweetFrog Enterprises, LLC) was committed to ensuring plaintiffs' success. Cha generally informed Biase that the New York metro area was more densely populated than Virginia and that a SweetFrog trademarked store would have substantially higher sales there as a result. He further indicated that he would be knowledgeable and in a position to advise on specific geographic areas in the

New York metro area, and would also be in a position to provide plaintiffs with information about how SweetFrog trademarked stores would perform in the New York metro area. Accordingly, plaintiffs believed Cha's projections, representations, and statements concerning financial information regarding the SweetFrog trademarked stores, believed that the representations were truthfully made, and believed that the representations were based on reliable data, for the purpose of benefitting both parties. As a result, Tri Star Consulting Group, Inc. executed the New York License Agreement (defined below) and began looking for locations in the New York metro area.

26. Among prospective locations in the New York metro area, plaintiffs identified a location for a SweetFrog trademarked store in Hauppauge, New York (where the Hauppauge Store, defined below, was ultimately located). Biase sent Cha information about demographics for Hauppauge, New York. Cha told Biase that, if he chose the right store location, his SweetFrog trademarked store would have a million dollars in sales. Upon review of that demographic information for the Hauppauge area, and in particular, the prospective Hauppauge location, Cha stated that a SweetFrog trademarked store at that location would have a million dollars in sales.

27. In or about the fall of 2011, Cha visited New York to review prospective SweetFrog trademarked store locations with Biase, including the prospective Hauppauge location. When they visited the Hauppauge location, Cha noted that it was close to other quick service restaurants and a high school. Cha approved the location of the Hauppauge Store, reiterated that it was a "million dollar location," and told Biase that he would make his investment back in his first year of operation. Cha also told Biase that the SweetFrog sales to food cost ratio would be 24%, and that Biase's sales to labor cost ratio would be between 15%-

20%. Cha also told Biase that a SweetFrog trademarked store in the New York metro area would do even better than Biase and his partners were doing with the SweetFrog trademarked store they were then operating in White Oak (in the Richmond, Virginia area) due to the significantly higher population density in the New York metro area.

28. The forgoing written and oral representations contained in paragraphs 22 – 27 will hereinafter be described as the "Earnings Claims."

29. A Franchise Disclosure Document ("FDD") was not provided to any of the plaintiffs by any of the defendants prior to any of the plaintiffs entering into their respective agreements, discussed below.

C. The New York License Agreement

30. On or about August 29, 2011, Tri Star Consulting Group, Inc. and SweetFrog Enterprises, LLC (then known as Imagination Enterprises, Inc.) entered into a master franchise agreement (the "New York License Agreement") pursuant to which Tri Star Consulting Group, Inc. was granted the exclusive right to open and operate SweetFrog trademarked stores (or to subfranchise that right to third-parties) to sell SweetFrog products utilizing the SweetFrog trademarks in a certain territory defined as any area within one mile of the lawful boundary of the five boroughs of New York City (Manhattan, the Bronx, Staten Island, Brooklyn and Queens) as well as Westchester County, Nassau County and Suffolk County (collectively, the "New York Territory").

31. Pursuant to the New York License Agreement, Tri Star Consulting Group, Inc. was required to pay to SweetFrog Enterprises, LLC an initial franchise fee of $20,000 for each store that it opened in the New York Territory and royalties equal to 3% of the gross sales of the SweetFrog products sold at each store on a monthly basis.

32. Pursuant to the New York License Agreement, when Tri Star Consulting Group, Inc. or SweetFrog Enterprises, LLC subfranchised the right to open and operate a SweetFrog trademarked store in the New York Territory, that franchisee would be required to pay an initial franchise fee of $30,000, and royalties equal to 5% of the gross sales of the SweetFrog products sold at each store on a monthly basis. Tri Star Consulting Group, Inc. would be entitled to $10,000 of the initial franchise fee and a 2% royalty, and Sweet Frog Enterprises, LLC would be entitled to $20,000 of the initial franchise fee and a 3% royalty. [For Manhattan, a slightly different fee structure was set up in the New York License Agreement.]

33. Pursuant to the New York License Agreement, in the event that any suit or other action is instituted to interpret or enforce the agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs as determined by the court.

34. The term of the New York License Agreement was to commence on August 29, 2011 and would remain in effect *in perpetuity* (emphasis in original) unless terminated or extended in accordance with the agreement.

35. On or about January 19, 2012, plaintiff Sweet Frog Hauppauge Inc. was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks in Hauppauge, New York (the "Hauppauge Store"), within the New York Territory.

36. In or about February 2012, an individual(s) or entity was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks in Sayville, New York (the "Sayville Store"), within the New York Territory.

37. Notwithstanding the fact that SweetFrog Enterprises, LLC had already conveyed to Tri Star Consulting Group, Inc. the exclusive right to subfranchise the right to open and

operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory, upon information and belief, on or about April 8, 2012, SweetFrog Enterprises, LLC entered into a master franchise agreement (the "Master License Agreement") with SFF, LLC. Pursuant to the Master License Agreement, SFF, LLC was granted the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks, in a geographic area which included the New York Territory.

38. In or about June 2012, Sweet Frog Stony Brook Inc. (an entity affiliated with plaintiffs) was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks in Stony Brook, New York (the "Stony Brook Store"), within the New York Territory.

39. On or about and between August 29, 2011 and September 2012, the Hauppauge Store, the Sayville Store and the Stony Brook Store paid SweetFrog Enterprises, LLC their initial franchise fee and royalties directly. Payments were not made by these stores to Tri Star Consulting Group, Inc. Thereafter, SweetFrog Enterprises, LLC would remit to Tri Star Consulting Group, Inc. $10,000 of each initial franchise fee and a 2% royalty relative to the Hauppauge Store, the Sayville Store and the Stony Brook Store, which was owed pursuant to the New York License Agreement. SweetFrog Enterprises, LLC would often make these payments following its receipt of an invoice sent by Tri Star Consulting Group, Inc.

40. On or about April 17, 2013, Sweet Frog Babylon Inc. (an entity affiliated with plaintiffs) was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks in Babylon, New York (the "Babylon Store"), within the New York Territory.

41. In or about August 2013, an individual(s) or entity was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks in Peekskill, New York (the "Peekskill Store"), within the New York Territory.

42. Upon information and belief, in late 2013 / early 2014 an entity was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks at Yankee Stadium in the Bronx, New York (the "Yankee Stadium Store"), within the New York Territory.

43. On or about and between October 2012 and the present, each of the above referenced stores continued to pay SweetFrog Enterprises, LLC the initial franchise fee and royalties directly. However, SweetFrog Enterprises, LLC failed to remit to Tri Star Consulting Group, Inc. $10,000 of each initial franchise fee and a 2% royalty relative to each of the above referenced stores, which was owed pursuant to the New York License Agreement.

44. No payments have ever been made by SweetFrog Enterprises, LLC relative to the Peekskill Store (despite a written confirmation by SweetFrog Enterprises, LLC that the New York License Agreement encompasses the Peekskill Store) or the Yankee Stadium Store, both of which are located in the New York Territory.

45. In or about February 2014, Tri Star Consulting Group, Inc. and SweetFrog Enterprises, LLC engaged in communications regarding SweetFrog Enterprises, LLC's request that Tri Star Consulting Group, Inc. enter into a broker agreement. Upon information and belief, SweetFrog Enterprises, LLC intended to replace the New York License Agreement with a broker agreement. Tri Star Consulting Group, Inc. refused to agree to certain terms and conditions proposed by SweetFrog Enterprises, LLC for inclusion in a broker agreement, and the same was never executed.

46. Thereafter, SweetFrog Enterprises, LLC's counsel sent a letter to Tri Star Consulting Group, Inc., dated March 21, 2014, which purported to terminate the New York License Agreement as of April 1, 2014. This termination was based on the alleged failure of the Hauppauge Store, the Stony Brook Store and the Babylon Store to pay certain royalties owed to SweetFrog Enterprises, LLC. The letter demanded that Tri Star Consulting Group, Inc. pay these past-due royalties, with interest, within ten days.

D. The Hauppauge License Agreement

47. As noted, on or about January 19, 2012, Sweet Frog Hauppauge Inc. and SweetFrog Enterprises, LLC (then known as Imagination Enterprises, Inc.) entered into a franchise agreement (the "Hauppauge License Agreement") pursuant to which Sweet Frog Hauppauge Inc. was granted the right to open and operate a SweetFrog trademarked store to sell SweetFrog products utilizing the SweetFrog trademarks at the Hauppauge Store, located at 601 Veterans Memorial Highway, Hauppauge, New York 11788.

48. The Hauppauge License Agreement initially noted that Tri Star Consulting Group, Inc. was a party to the contract, but the parties agreed that the Hauppauge Store would be opened and operated by a separate entity which was to be formed after the Hauppauge License Agreement was executed. Once that entity – Sweet Frog Hauppauge Inc. – was formed, the parties substituted it as the franchisee in place of Tri Star Consulting Group, Inc.

49. Pursuant to the Hauppauge License Agreement, Sweet Frog Hauppauge Inc. agreed and was required to pay to SweetFrog Enterprises, LLC an initial franchise fee of $25,000 and royalties equal to 5% of the gross sales of the SweetFrog products sold at the store on a monthly basis.

50. Biase, on behalf of Sweet Frog Hauppauge Inc. (which was intended to be and was the franchisee of the Hauppauge Store) paid an initial franchise fee in the sum of $25,000 for the Hauppauge Store.

51. The Hauppauge Store opened for business in or about June 2012, and ultimately closed on or about February 3, 2014. As of that date, the Hauppauge Store had not made any net income whatsoever.

52. Sweet Frog Hauppauge Inc. expended and lost over $330,000 in start up costs, including but not limited to initial fees and investment expenses, and operating losses in connection with its investment in the Hauppauge Store.

AS AND FOR A FIRST CAUSE OF ACTION
Breach of Contract
(By Tri Star Consulting Group, Inc. Against SweetFrog Enterprises, LLC)

53. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 52 of this complaint with the same force and effect as if fully set forth herein.

54. SweetFrog Enterprises, LLC breached the New York License Agreement by entering into the Master License Agreement pursuant to which SFF, LLC was granted the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory, in direct violation of the New York License Agreement.

55. Tri Star Consulting Group, Inc. has performed all of its obligations under the New York License Agreement.

56. As a result of this material breach of contract, Tri Star Consulting Group, Inc. has suffered and continues to suffer damages.

57. By reason of the foregoing, Tri Star Consulting Group, Inc. has been damaged in a sum to be determined by the court, but believed to be in excess of $75,000, together with interest.

AS AND FOR A SECOND CAUSE OF ACTION
Breach of Contract
(By Tri Star Consulting Group, Inc. Against SweetFrog Enterprises, LLC)

58. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 57 of this complaint with the same force and effect as if fully set forth herein.

59. SweetFrog Enterprises, LLC breached the New York License Agreement by failing to remit to Tri Star Consulting Group, Inc. the monies it was owed pursuant to the New York License Agreement relative to the Hauppauge Store, the Stony Brook Store, the Babylon Store, the Sayville Store, the Peekskill Store and the Yankee Stadium Store, all of which are located in the New York Territory.

60. Tri Star Consulting Group, Inc. has performed all of its obligations under the New York License Agreement.

61. As a result of this material breach of contract, Tri Star Consulting Group, Inc. has suffered and continues to suffer damages.

62. By reason of the foregoing, Tri Star Consulting Group, Inc. has been damaged in a sum to be determined by the court, but believed to be in excess of $75,000, together with interest.

AS AND FOR A THIRD CAUSE OF ACTION
Declaratory Judgment
(By Tri Star Consulting Group, Inc. Against SweetFrog Enterprises, LLC)

63. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 62 of this complaint with the same force and effect as if fully set forth herein.

64. There is now an actual and justiciable controversy existing between Tri Star Consulting Group, Inc. and SweetFrog Enterprises, LLC, more particularly as to whether Tri Star Consulting Group, Inc. is in default of the New York License Agreement and whether the New York License Agreement was properly terminated.

65. Tri Star Consulting Group, Inc. is entitled to a judgment declaring that if the Hauppauge Store, the Stony Brook Store, the Babylon Store, the Sayville Store, the Peekskill Store, the Yankee Stadium Store and/or any SweetFrog trademarked stores which may open in the New York Territory in the future have not paid and/or do not pay their royalties when due, Tri Star Consulting Group, Inc. is not and may not be deemed liable or otherwise obligated for the payment of those royalties.

66. Further, Tri Star Consulting Group, Inc. is also entitled to a judgment declaring that the failure of these stores (and/or of any SweetFrog trademarked stores which may open in the New York Territory in the future) to pay their royalties when due is not and may not constitute valid cause for deeming Tri Star Consulting Group, Inc. to be in default under the New York License Agreement.

67. Additionally, Tri Star Consulting Group, Inc. is entitled to a judgment declaring that the letter dated March 21, 2014 purportedly terminating the New York License Agreement was a wrongful termination and is thus invalid and void, along with a judgment declaring that the New York License Agreement is currently in full force and effect.

68. Tri Star Consulting Group, Inc. has no adequate remedy at law.

69. By reason of the forgoing, Tri Star Consulting Group, Inc. requests that the court declare the parties' rights and obligations in a declaratory judgment.

AS AND FOR A FOURTH CAUSE OF ACTION
Declaratory Judgment
(By Tri Star Consulting Group, Inc. Against SweetFrog Enterprises, LLC and SFF, LLC)

70. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 69 of this complaint with the same force and effect as if fully set forth herein.

71. There is now an actual and justiciable controversy existing between Tri Star Consulting Group, Inc. and SweetFrog Enterprises, LLC, more particularly as to whether SweetFrog Enterprises, LLC was prohibited from granting SFF, LLC the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in a geographic area which included the New York Territory; whether the Master License Agreement is invalid as to the New York Territory; and a determination as to whether SweetFrog Enterprises, LLC has an obligation to pay Tri Star Consulting Group, Inc. certain monies.

72. Tri Star Consulting Group, Inc. is entitled to a judgment declaring that SweetFrog Enterprises, LLC was prohibited from granting SFF, LLC the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in a geographic area which included the New York Territory.

73. Tri Star Consulting Group, Inc. is entitled to a judgment declaring that the Master License Agreement is invalid as to the New York Territory.

74. Tri Star Consulting Group, Inc. is also entitled to a judgment declaring that SweetFrog Enterprises, LLC is prohibited from granting SFF, LLC the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory, and is prohibited from allowing it to do so.

75. Tri Star Consulting Group, Inc. is also entitled to a judgment declaring that, pursuant to the New York License Agreement, it is entitled to receive from SweetFrog Enterprises, LLC $10,000 of the initial franchise fee and a 2% royalty relative to the Hauppauge Store, the Stony Brook Store, the Babylon Store, the Sayville Store, the Peekskill Store and the Yankee Stadium Store (for past initial franchise fees and past and future royalties), and relative to any new SweetFrog trademarked stores which may open up in the New York Territory in the future.

76. Tri Star Consulting Group, Inc. has no adequate remedy at law.

77. By reason of the forgoing, Tri Star Consulting Group, Inc. requests that the court declare the parties' rights and obligations in a declaratory judgment.

AS AND FOR A FIFTH CAUSE OF ACTION
Breach of Contract
(By Tri Star Consulting Group, Inc. Against SweetFrog Enterprises, LLC)

78. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 77 of this complaint with the same force and effect as if fully set forth herein.

79. SweetFrog Enterprises, LLC breached the New York License Agreement by wrongfully terminating it.

80. Tri Star Consulting Group, Inc. has performed all of its obligations under the New York License Agreement.

81. As a result of this material breach of contract, Tri Star Consulting, Inc. has suffered and continues to suffer damages.

82. By reason of the foregoing, Tri Star Consulting, Inc. has been damaged in a sum to be determined by the court, but believed to be in excess of $75,000, together with interest.

AS AND FOR A SIXTH CAUSE OF ACTION
Injunctive Relief
(By Tri Star Consulting Group, Inc. Against SFF, LLC)

83. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 82 of this complaint with the same force and effect as if fully set forth herein.

84. If SFF, LLC is not prevented from subfranchising the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory, Tri Star Consulting Group, Inc. will be irreparably injured.

85. Tri Star Consulting Group, Inc. has no adequate remedy at law.

86. By reason of the foregoing, Tri Star Consulting Group, Inc. is entitled to an injunction permanently enjoining SFF, LLC from granting licenses or franchise rights to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory.

AS AND FOR A SEVENTH CAUSE OF ACTION
Attorneys' Fees Pursuant to the New York License Agreement
(By Tri Star Consulting Group, Inc. Against SweetFrog Enterprises, LLC)

87. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 86 of this complaint with the same force and effect as if fully set forth herein.

88. As previously noted, pursuant to the New York License Agreement, Tri Star Consulting Group, Inc. is entitled to recover from SweetFrog Enterprises, LLC its attorneys' fees and costs stemming from the instant action to interpret and enforce the New York License Agreement.

89. As a result of SweetFrog Enterprises, LLC's acts, Tri Star Consulting Group, Inc. has retained the services of counsel to represent it in this matter and will incur attorneys' fees and

costs. These attorneys' fees and costs are reasonable and necessary in order to prosecute this matter.

90. Tri Star Consulting Group, Inc. is entitled to award of attorneys' fees and costs in an amount to be proven at trial.

AS AND FOR AN EIGHTH CAUSE OF ACTION
Violation of New York General Business Law § 687 - Fraudulent Earnings Claims
(By Sweet Frog Hauppauge Inc. Against SweetFrog Enterprises, LLC)

91. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 90 of this complaint with the same force and effect as if fully set forth herein.

92. Prior to execution of the Hauppauge License Agreement, SweetFrog Enterprises, LLC provided the Earnings Claims referred to above to Sweet Frog Hauppauge Inc.

93. Upon information and belief, the Earnings Claims were false and misleading.

94. In reasonable reliance on the aforementioned Earnings Claims, Sweet Frog Hauppauge Inc. entered into the Hauppauge License Agreement and invested and lost substantial sums of money in the establishment and operation of the Hauppauge Store.

95. The foregoing Earnings Claims were material to Sweet Frog Hauppauge Inc.'s investment decision and were made willfully in that, *inter alia*, a) they were made to induce Sweet Frog Hauppauge Inc. to enter into the Hauppauge License Agreement; and b) SweetFrog Enterprises, LLC utterly disregarded the clear and unambiguous law and regulations of the FSA and knew or should have known of the regulations of the FSA.

96. Cha directly or indirectly controlled SweetFrog Enterprises, LLC and materially aided in the violation of the FSA.

97. By reason of the foregoing, Sweet Frog Hauppauge Inc. is entitled to rescission of the Hauppauge License Agreement and any/all related agreements, and has been damaged in a

sum to be determined by the court, but believed to be in excess of $330,000, together with interest.

AS AND FOR A NINTH CAUSE OF ACTION
Violation of New York General Business Law § 683 and § 687 – Disclosure Violations
(By Sweet Frog Hauppauge Inc. Against SweetFrog Enterprises, LLC)

98. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 97 of this complaint with the same force and effect as if fully set forth herein.

99. The Hauppauge License Agreement constituted the sale of a franchise as defined under New York law.

100. Prior to SweetFrog Enterprises, LLC offering the SweetFrog franchise for sale to Sweet Frog Hauppauge Inc., and prior to SweetFrog Enterprises, LLC entering into the Hauppauge License Agreement for the sale of a franchise, SweetFrog Enterprises, LLC was required to register to offer and sell franchises with the New York State Department of Law, Office of the Attorney General, and was required to provide Sweet Frog Hauppauge Inc. with a FDD.

101. In utter disregard of the clear and unambiguous law and regulations of the FSA, SweetFrog Enterprises, LLC willfully offered and sold a franchise to Sweet Frog Hauppauge Inc. even though it was not registered with the New York State Department of Law, Office of the Attorney General to sell franchises at the time of the offer or sale of the franchise.

102. SweetFrog Enterprises, LLC willfully offered and sold a franchise to Sweet Frog Hauppauge Inc. before providing it with a FDD that was required to contain information concerning the franchise opportunity being sold. This activity violates New York General Business Law §§ 683 and 687.

103. Cha directly or indirectly controlled SweetFrog Enterprises, LLC materially aided in the violation of the FSA.

104. By reason of the foregoing, Sweet Frog Hauppauge Inc. is entitled to rescission of the Hauppauge License Agreement and any/all related agreements, and has been damaged in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest.

AS AND FOR A TENTH CAUSE OF ACTION
Violation of New York General Business Law § 683 – Earnings Claims
(By Sweet Frog Hauppauge Inc. Against SweetFrog Enterprises, LLC)

105. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 104 of this complaint with the same force and effect as if fully set forth herein.

106. Pursuant to New York General Business Law § 683, franchisors must make all claims concerning historical or potential earnings, revenues and profitability in writing to prospective franchisees in a FDD provided to the prospective franchisee prior to the sale of the franchise, together with a statement setting forth the data, methods and computations on which the claims concerning historical or potential earnings, revenues and profitability were based.

107. Prior to execution of the Hauppauge License Agreement, SweetFrog Enterprises, LLC provided the Earnings Claims to Sweet Frog Hauppauge Inc.

108. The aforementioned Earnings Claims were not included in a FDD, and SweetFrog Enterprises, LLC failed to provide Sweet Frog Hauppauge Inc. with a statement setting forth the data, methods and computations on which the Earnings Claims were based.

109. The failure to provide Sweet Frog Hauppauge Inc. with the aforementioned Earnings Claims in writing in a FDD, and to provide Sweet Frog Hauppauge Inc. with a statement setting forth the data, methods and computations on which the Earnings Claims were

based, was willful and material in that, *inter alia*, SweetFrog Enterprises, LLC utterly disregarded the clear and unambiguous law and regulations of the FSA and knew or should have known of the regulations of the FSA.

110. Cha directly or indirectly controlled SweetFrog Enterprises, LLC and materially aided in the violation of the FSA.

111. By reason of the foregoing, Sweet Frog Hauppauge Inc. is entitled to rescission of the Hauppauge License Agreement and any/all related agreements, and has been damaged in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

Attorneys' Fees For Violation of New York General Business Law
(By Sweet Frog Hauppauge Inc. Against SweetFrog Enterprises, LLC and Cha)

112. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 111 of this complaint with the same force and effect as if fully set forth herein.

113. Pursuant to New York General Business Law § 691, SweetFrog Enterprises, LLC and Cha are jointly and severally liable for reasonable attorneys' fees and court costs stemming from their violations of New York General Business Law § 683 and § 687.

114. As a result of SweetFrog Enterprises, LLC and Cha's acts, Sweet Frog Hauppauge Inc. has retained the services of counsel to represent it in this matter and will incur attorneys' fees and costs. These attorneys' fees and costs are reasonable and necessary in order to prosecute this matter.

115. Sweet Frog Hauppauge Inc. is entitled to award of attorneys' fees and costs in an amount to be proven at trial.

AS AND FOR A TWELFTH CAUSE OF ACTION
Common Law Fraud for Pre-Franchise Agreement Earnings Claims
(By Sweet Frog Hauppauge Inc. Against SweetFrog Enterprises, LLC)

116. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 115 of this complaint with the same force and effect as if fully set forth herein.

117. Prior to execution of the Hauppauge License Agreement, SweetFrog Enterprises, LLC provided the Earnings Claims referred to above to Sweet Frog Hauppauge Inc.

118. Upon information and belief, the Earnings Claims were false and misleading.

119. In reasonable reliance on the aforementioned Earnings Claims, Sweet Frog Hauppauge Inc. entered into the Hauppauge License Agreement and invested and lost substantial sums of money in the establishment and operation of the Hauppauge Store.

120. The foregoing representations were material to Sweet Frog Hauppauge Inc.'s investment decision and were made willfully in that, *inter alia*, the Earnings Claims were made to induce Sweet Frog Hauppauge Inc. to enter into the Hauppauge License Agreement.

121. By reason of the foregoing, Sweet Frog Hauppauge Inc. is entitled to rescission of the Hauppauge License Agreement and any/all related agreements, and has been damaged in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
Common Law Negligent Misrepresentation for Pre-Franchise Agreement Earnings Claims
(By Sweet Frog Hauppauge Inc. Inc. Against SweetFrog Enterprises, LLC)

122. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 121 of this complaint with the same force and effect as if fully set forth herein.

123. Prior to execution of the Hauppauge License Agreement, SweetFrog Enterprises, LLC provided the Earnings Claims referred to above to Sweet Frog Hauppauge Inc.

124. Upon information and belief, the Earnings Claims were false and misleading.

125. In reasonable reliance on the aforementioned Earnings Claims, Sweet Frog Hauppauge Inc. entered into the Hauppauge License Agreement and invested and lost substantial sums of money in the establishment and operation of the Hauppauge Store.

126. The foregoing representations were material to Sweet Frog Hauppauge Inc.'s investment decision and were made negligently in that, *inter alia*, SweetFrog Enterprises, LLC had no reasonable ground for believing them to be true, and made them with negligent disregard as to their falsity.

127. By reason of the foregoing, Sweet Frog Hauppauge Inc. is entitled to rescission of the Hauppauge License Agreement and any/all related agreements, and has been damaged in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest.

WHEREFORE, plaintiffs demand judgment as follows:

1. On the first cause of action, awarding Tri Star Consulting Group, Inc. compensation in the sum to be determined by this court, but believed to be in excess of $75,000, together with interest, for which SweetFrog Enterprises, LLC is liable;

2. On the second cause of action, awarding Tri Star Consulting Group, Inc. compensation in the sum to be determined by this court, but believed to be in excess of $75,000, together with interest, for which SweetFrog Enterprises, LLC is liable;

3. On the third cause of action, awarding Tri Star Consulting Group, Inc. a declaratory judgment against SweetFrog Enterprises, LLC which declares: (a) that if the Hauppauge Store, the Stony Brook Store, the Babylon Store, the Sayville Store, the Peekskill Store, the Yankee Stadium Store and/or any SweetFrog trademarked stores which may open in

the New York Territory in the future have not paid and/or do not pay their royalties when due, Tri Star Consulting Group, Inc. is not and may not be deemed liable or otherwise obligated for the payment of those royalties; (b) that the failure of these stores (and/or of any SweetFrog trademarked stores which may open in the New York Territory in the future) to pay their royalties when due is not and may not constitute valid cause for deeming Tri Star Consulting Group, Inc. to be in default under the New York License Agreement; (c) that the letter dated March 21, 2014 purportedly terminating the New York License Agreement was a wrongful termination and is thus invalid and void; and (d) that the New York License Agreement is currently in full force and effect;

4. On the fourth cause of action, awarding Tri Star Consulting Group, Inc. a declaratory judgment against SweetFrog Enterprises, LLC which declares: (a) that SweetFrog Enterprises, LLC was prohibited from granting SFF, LLC the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in a geographic area which included the New York Territory; (b) that the Master License Agreement is invalid as to the New York Territory; (c) that SweetFrog Enterprises, LLC is prohibited from granting SFF, LLC the right to subfranchise the right to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory, and is prohibited from allowing it to do so; (d) that, pursuant to the New York License Agreement, it is entitled to receive from SweetFrog Enterprises, LLC $10,000 of the initial franchise fee and a 2% royalty relative to the Hauppauge Store, the Stony Brook Store, the Babylon Store, the Sayville Store, the Peekskill Store and the Yankee Stadium Store (for past initial franchise fees and past and future royalties), and relative

to any new SweetFrog trademarked stores which may open up in the New York Territory in the future.

5. On the fifth cause of action, awarding Tri Star Consulting Group, Inc. compensation in the sum to be determined by this court, but believed to be in excess of $75,000, together with interest, for which SweetFrog Enterprises, LLC is liable;

6. On the sixth cause of action, awarding Tri Star Consulting Group, Inc. an injunction permanently enjoining SFF, LLC from granting licenses or franchise rights to open and operate SweetFrog trademarked stores to sell SweetFrog products utilizing the SweetFrog trademarks in the New York Territory;

7. On the seventh cause of action, awarding Tri Star Consulting Group, Inc. attorneys' fees in a sum to be determined by the court, and the costs and disbursements of this action, for which SweetFrog Enterprises, LLC is liable;

8. On the eighth cause of action, awarding Sweet Frog Hauppauge Inc. rescission of the Hauppauge License Agreement and any/all related agreements and damages in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest, for which SweetFrog Enterprises, LLC and Cha are jointly and severally liable;

9. On the ninth cause of action, awarding Sweet Frog Hauppauge Inc. rescission of the Hauppauge License Agreement and any/all related agreements and damages in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest, for which SweetFrog Enterprises, LLC and Cha are jointly and severally liable;

10. On the tenth cause of action, awarding Sweet Frog Hauppauge Inc. rescission of the Hauppauge License Agreement and any/all related agreements and damages in a sum to be

determined by the court, but believed to be in excess of $330,000, together with interest, for which SweetFrog Enterprises, LLC and Cha are jointly and severally liable;

11. On the eleventh cause of action, awarding Sweet Frog Hauppauge Inc. attorneys' fees in a sum to be determined by the court, and the costs and disbursements of this action, for which SweetFrog Enterprises, LLC and Cha are jointly and severally liable;

12. On the twelfth cause of action, awarding Sweet Frog Hauppauge Inc. rescission of the Hauppauge License Agreement and any/all related agreements and damages in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest, for which SweetFrog Enterprises, LLC is liable;

13. On the thirteenth cause of action, awarding Sweet Frog Hauppauge Inc. rescission of the Hauppauge License Agreement and any/all related agreements and damages in a sum to be determined by the court, but believed to be in excess of $330,000, together with interest, for which SweetFrog Enterprises, LLC is liable; and

14. Such other and further relief as to this court may seem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: New York, New York
April 9, 2014

EINBINDER & DUNN, LLP

By: */s/* Michael Einbinder

Michael Einbinder (ME-3930)
104 West 40th Street, 20th Floor
New York, New York 10018
Tel.: (212) 391-9500
Fax: (212) 391-9025
me@ed-lawfirm.com

Counsel for Plaintiffs